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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Fund for Empowerment, *et al.*,

Plaintiffs,

v.

City of Phoenix, *et al.*,

Defendants.

Case No.: CV-22-02041-PHX-GMS

Proposed Answer in Intervention

Proposed Intervenors, through counsel for the undersigned, answer the First Amended Complaint as follows:

1. Admit.
2. Deny to the extent that Plaintiffs imply that there are no other “sustainable solutions” currently available to the City, otherwise admit.
3. Unable to admit or deny, and for that reason, deny.
4. Deny to the extent that the numbers presented do not establish to what extent if any there is a shortfall in temporary shelter space for those who wish to use it.
5. Admit.
6. Admit.

- 1 7. Admit.
- 2 8. Deny.
- 3 9. Deny.
- 4 10. Deny.
- 5 11. Unable to admit or deny, and for that reason, deny.
- 6 12. Deny.
- 7 13. Admit.
- 8 14. Admit.
- 9 15. Admit.
- 10 16. Admit.
- 11 17. Unable to admit or deny, and for that reason, deny.
- 12 18. Unable to admit or deny, and for that reason, deny.
- 13 19. Unable to admit or deny, and for that reason, deny.
- 14 20. Unable to admit or deny, and for that reason, deny.
- 15 21. Unable to admit or deny, and for that reason, deny.
- 16 22. Admit.
- 17 23. Unable to admit or deny, and for that reason, deny.
- 18 24. Unable to admit or deny, and for that reason, deny.
- 19 25. Unable to admit or deny, and for that reason, deny.
- 20 26. Unable to admit or deny, and for that reason, deny.
- 21 27. Admit.
- 22 28. Admit.
- 23 29. Admit to the extent that part of the increase relates to lack of affordable
- 24 housing.
- 25 30. Admit.
- 26 31. Admit.
- 27 32. Admit.
- 28 33. Admit.

- 1 34. Deny.
- 2 35. Deny.
- 3 36. Deny.
- 4 37. Deny.
- 5 38. Deny.
- 6 39. Deny.
- 7 40. Deny.
- 8 41. Deny.
- 9 42. Deny.
- 10 43. Deny.
- 11 44. Deny.
- 12 45. Deny.
- 13 46. Deny.
- 14 47. Deny.
- 15 48. Deny.
- 16 49. This is not a factual allegation, but a legal contention. Deny.
- 17 50. Deny.
- 18 51. Deny.
- 19 52. Deny.
- 20 53. Deny.
- 21 54. Admit.
- 22 55. Deny.
- 23 56. Admit.
- 24 57. Admit.
- 25 58. This is not a factual allegation, but a legal contention. Deny.
- 26 59. Deny.
- 27 60. Admit.
- 28 61. Proposed Intervenors are unable to determine what “broad” means in this

1 context. They are also unable to admit or deny whether and to what extent the “Sleeping
2 Ban” covers areas otherwise unused by pedestrians. Otherwise, admit.

3 62. Deny.

4 63. Deny.

5 64. Deny.

6 65. Unable to admit or deny, and for that reason, deny.

7 66. Unable to admit or deny, and for that reason, deny.

8 67. Deny.

9 68. Deny.

10 69. This is not a factual allegation, but a legal contention. Deny.

11 70. Unable to admit or deny, and for that reason, deny.

12 71. Unable to admit or deny, and for that reason, deny.

13 72. Unable to admit or deny, and for that reason, deny.

14 73. Unable to admit or deny, and for that reason, deny.

15 74. Unable to admit or deny, and for that reason, deny.

16 75. Unable to admit or deny, and for that reason, deny.

17 76. Unable to admit or deny, and for that reason, deny.

18 77. Unable to admit or deny, and for that reason, deny.

19 78. Unable to admit or deny, and for that reason, deny.

20 79. Unable to admit or deny, and for that reason, deny.

21 80. Unable to admit or deny, and for that reason, deny.

22 81. Unable to admit or deny, and for that reason, deny.

23 82. Unable to admit or deny, and for that reason, deny.

24 83. Unable to admit or deny, and for that reason, deny.

25 84. Unable to admit or deny, and for that reason, deny.

26 85. Unable to admit or deny, and for that reason, deny.

27 86. Unable to admit or deny, and for that reason, deny.

28 87. Unable to admit or deny, and for that reason, deny.

- 1 88. Unable to admit or deny, and for that reason, deny.
- 2 89. Unable to admit or deny, and for that reason, deny.
- 3 90. Unable to admit or deny, and for that reason, deny.
- 4 91. Unable to admit or deny, and for that reason, deny.
- 5 92. Unable to admit or deny, and for that reason, deny.
- 6 93. Unable to admit or deny, and for that reason, deny.
- 7 94. Unable to admit or deny, and for that reason, deny.
- 8 95. Unable to admit or deny, and for that reason, deny.
- 9 96. Unable to admit or deny, and for that reason, deny.
- 10 97. Unable to admit or deny, and for that reason, deny.
- 11 98. Unable to admit or deny, and for that reason, deny.
- 12 99. Unable to admit or deny, and for that reason, deny.
- 13 100. Unable to admit or deny, and for that reason, deny.
- 14 101. Unable to admit or deny, and for that reason, deny.
- 15 102. Unable to admit or deny, and for that reason, deny.
- 16 103. Unable to admit or deny, and for that reason, deny.
- 17 104. Unable to admit or deny, and for that reason, deny.
- 18 105. Unable to admit or deny, and for that reason, deny.
- 19 106. Unable to admit or deny, and for that reason, deny.
- 20 107. Unable to admit or deny, and for that reason, deny.
- 21 108. Unable to admit or deny, and for that reason, deny.
- 22 109. Unable to admit or deny, and for that reason, deny.
- 23 110. Unable to admit or deny, and for that reason, deny.
- 24 111. Unable to admit or deny, and for that reason, deny.
- 25 112. Unable to admit or deny, and for that reason, deny.
- 26 113. Unable to admit or deny, and for that reason, deny.
- 27 114. Unable to admit or deny, and for that reason, deny.
- 28 115. Unable to admit or deny, and for that reason, deny.

1 116. Unable to admit or deny, and for that reason, deny.

2 117. Deny.

3 118. Unable to admit or deny, and for that reason, deny.

4 119. Unable to admit or deny, and for that reason, deny.

5 120. Admit.

6 121. Deny.

7 122. Deny.

8 123. Deny.

9 124. Deny.

10 125. Deny.

11 126. For their response to paragraph 126, Proposed Intervenor incorporate the
12 preceding paragraphs of this Answer.

13 127. Admit.

14 128. Admit.

15 129. Admit.

16 130. Admit.

17 131. Deny.

18 132. This is not a factual allegation, but a legal contention. Deny.

19 133. Unable to admit or deny, and for that reason, deny.

20 134. Unable to admit or deny, and for that reason, deny.

21 135. This is not a factual allegation, but a legal contention. Deny.

22 136. Unable to admit or deny, and for that reason, deny.

23 137. Admit.

24 138. This is not a factual allegation, but a legal contention. Deny.

25 139. Admit.

26 140. This is not a factual allegation, but a legal contention. Deny.

27 141. This is not a factual allegation, but a legal contention. Deny.

28 142. This is not a factual allegation, but a legal contention. Deny.

1 143. For their response to paragraph 143, Proposed Intervenor incorporate the
2 preceding paragraphs of this Answer.

3 144. Admit.

4 145. Admit.

5 146. Admit.

6 147. Admit.

7 148. Deny.

8 149. This is not a factual allegation, but a legal contention. Deny.

9 150. This is not a factual allegation, but a legal contention. Deny.

10 151. This is not a factual allegation, but a legal contention. Deny.

11 152. Unable to admit or deny, and for that reason, deny.

12 153. Unable to admit or deny, and for that reason, deny.

13 154. This is not a factual allegation, but a legal contention. Deny.

14 155. This is not a factual allegation, but a legal contention. Deny.

15 156. This is not a factual allegation, but a legal contention. Deny.

16 157. This is not a factual allegation, but a legal contention. Deny.

17 158. For their response to paragraph 158, Proposed Intervenor incorporate the
18 preceding paragraphs of this Answer.

19 159. Admit.

20 160. Admit to the extent the Ninth Circuit has interpreted the Eighth Amendment
21 in this manner.

22 161. This is not a factual allegation, but a legal contention. Deny.

23 162. This is not a factual allegation, but a legal contention. Deny.

24 163. Admit.

25 164. Admit.

26 165. Deny.

27 166. Admit that the City and its officials and employees have a legal duty to
28 enforce the ordinances in question, otherwise deny.

- 1 167. Unable to admit or deny, and for that reason, deny.
- 2 168. Deny.
- 3 169. This is not a factual allegation, but a legal contention. Deny.
- 4 170. This is not a factual allegation, but a legal contention. Deny.
- 5 171. This is not a factual allegation, but a legal contention. Deny.
- 6 172. This is not a factual allegation, but a legal contention. Deny.
- 7 173. This is not a factual allegation, but a legal contention. Deny.
- 8 174. For their response to paragraph 174, Proposed Intervenorors incorporate the
9 preceding paragraphs of this Answer.
- 10 175. Admit.
- 11 176. Admit.
- 12 177. Unable to admit or deny, and for that reason, deny.
- 13 178. Unable to admit or deny the factual elements of this allegation and, insofar
14 as it is not a factual allegation, but a legal contention, deny.
- 15 179. Unable to admit or deny the factual elements of this allegation and, insofar
16 as it is not a factual allegation, but a legal contention, deny.
- 17 180. Deny.
- 18 181. Unable to admit or deny the factual elements of this allegation and, insofar
19 as it is not a factual allegation, but a legal contention, deny.
- 20 182. Unable to admit or deny, and for that reason, deny.
- 21 183. Unable to admit or deny, and for that reason, deny.
- 22 184. This is not a factual allegation, but a legal contention. Deny.
- 23 185. For their response to paragraph 185, Proposed Intervenorors incorporate the
24 preceding paragraphs of this Answer.
- 25 186. Unable to admit or deny the factual elements of this allegation and, insofar
26 as it is not a factual allegation, but a legal contention, deny.
- 27 187. Admit.
- 28 188. Deny. The Zone is much larger than that, extending along 9th and 13th

1 Avenues from Jefferson Street to the railroad tracks south of Jackson Street, and along
 2 Jefferson, Madison, and Jackson streets from 8th to 13th Avenues. This amounts to over
 3 one dozen “blocks.”

4 189. Admit.

5 190. Admit.

6 191. Admit.

7 192. Admit.

8 193. Admit.

9 194. Admit.

10 195. Unable to admit or deny, and for that reason, deny.

11 196. Admit.

12 197. Unable to admit or deny, and for that reason, deny.

13 198. Admit.

14 199. Admit.

15 200. Admit.

16 201. Admit.

17 202. This is not a factual allegation, but a legal contention. Deny.

18 **AFFIRMATIVE DEFENSES**

19 1. Plaintiffs fail to state a claim upon which relief can be granted. None of the
 20 Plaintiffs has alleged that he or she is *involuntarily* homeless, as required by *Martin v. City*
 21 *of Boise*. None of the Plaintiffs alleges that the City of Phoenix does not have other
 22 practically available shelter for unsheltered persons when the City conducts its cleaning
 23 sweeps.

24 2. Plaintiffs, not being involuntarily homeless, and not having been convicted
 25 under any relevant ordinance, lack standing to bring this lawsuit on behalf of persons who
 26 are in fact involuntarily homeless.

27 3. Dismissal is mandated by the doctrine of *Younger* abstention.

1 RESPECTFULLY SUBMITTED this 23rd day of May, 2023.

2
3 **TULLY BAILEY LLP**

4 /s/ Stephen W. Tully

5 Stephen W. Tully
6 Michael Bailey
7 Ilan Wurman
8 *Attorneys for the Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By: /s/ Stephen W. Tully